FARM CREDIT COUNCIL

August 16, 2017

Mr. Barry F. Mardock
Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

RE: RIN 3052-AD24 Regulatory Burden

Dear Mr. Mardock:

The Farm Credit Council (Council), on behalf of its membership, appreciates the opportunity to respond to the FCA's request for comment concerning Regulatory Burden that was published in the May 18, 2017 *Federal Register* (78 Fed Reg No. 95, page 22762).

First, we again want to commend the FCA for the systematic review it conducts of its regulations to determine those that may be revised or eliminated because they are duplicative, ineffective, or impose burdens greater than the benefits received. We also appreciate that you have expedited this periodic review.

The comments that follow were developed after soliciting input from all Farm Credit System (System) institutions. Conference calls were conducted with representatives from throughout the System A draft comment letter was then circulated for additional input and incorporated into these comments. Several System institutions also will be submitting their own responses to your request for input. We urge you to consider their comments as you continue your regulatory review.

GENERAL

In accord with your request, and except as noted below, we are not including comments on matters that are the subject of currently Proposed Rules or with respect to Final Rules that became effective after December 31, 2016. The currently Proposed Rule regarding Standards of Conduct is still shown as "pending" on your website. Based on your Spring 2017 Regulatory Projects Plan (the "Plan"), it our understanding that you plan to re-propose a new rule sometime this year. Accordingly, we will provide specific comments on the new proposal at the appropriate time.

We also note that many comments are directed to the "informal guidance" provided by FCA through other agency actions, including "Bookletters", Informational Memoranda,

and Examination Guidance. While in some cases that guidance has proven helpful, in other situations it has resulted in additional "requirements" being imposed upon System institutions without the opportunity for notice and comment. Such guidance needs to be regarded as just that, and not considered as required.

The agency's current Plan reflects that you are conducting reviews in Appraisal Regulations, Financing of Farm-Related Service Businesses, and Borrower Rights. We received numerous comments on all those subjects. We believe there are opportunities to reduce regulatory burden in each of those areas. We specifically note that the other Federal regulators have proposed to raise the dollar thresholds for real estate appraisals on commercial loans. There are also concerns regarding requirements for chattel appraisals as well as real property appraisals. Section 614.4250 requires a collateral evaluation in all cases when personal property is taken, even out of an abundance of caution. This can discourage lenders from taking security for the loan. As we have commented in the past, we believe the "Farm-Related" Business regulations can be modernized to reflect current marketing practices for "food hubs", farmers' markets, and the promotion of urban agriculture. The regulations also need to recognize that the nature and scope of farm related business services can evolve over time, and the System should be able to maintain financing relationships on eligible business activities. We also believe the FCA should review the eligibility of 'aquatic related businesses." The agency can also take steps to streamline and simplify borrower rights requirements, both with respect to effective interest rate disclosures and notices, as well as loan servicing for customers experiencing financial distress, while maintaining all statutory provisions. We encourage the agency to move forward with Proposed Rules on all these subjects, at which time we will submit specific comments.

We also received comments regarding Investment Eligibility regulations. This item is on the FCA's Regulatory Projects Plan, and scheduled for Final Rule sometime this year. As such, we will not make specific comments on that subject in this response.

With respect to information that System institutions are required to submit to FCA, we encourage the agency to promote the use of electronic submissions, whether through the "secure portal" or otherwise.

The FCA is also part of an inter-agency rule making process regarding Flood Insurance. We encourage the agency to look at various cost reducing aspects of this program, specifically as it relates miscellaneous "out buildings" which add little value to the property, and in many cases would not be replaced if they were damaged. Institutions should also be allowed to rely on "church" insurance in those situations where the lender has made a reasonable determination that such insurance provides adequate protection in the event the collateral suffers a loss due to flood.

Finally, we note that the "regulatory burden" the agency is seeking to reduce is often times felt disproportionately by smaller associations. A "one size fits all" regulatory scheme can

translate to higher operating costs. Inevitably this becomes an issue as individual institutions make decisions regarding their structure.

SPECIFIC COMMENTS

Section 611.220(a)(1) currently precludes an "outside" director from serving on the board of an FCA chartered Service Corporation. We believe this provision is more restrictive than is required by the Act (which, as you know, only requires a bank or association to have one outside director). As long as the prospective bank or association director candidate is not a director of another institution at the time of his selection, the Act's requirement is satisfied.

Additionally, the arbitrary prohibition on outside directors serving on service corporations is contrary to the spirit of the Act (creating a "second class" of directors), and counterproductive in terms of keeping qualified directors from serving on service corporation boards.

Current Section 611.326 specifies the procedures to use for allowing floor nominations at association annual meetings. The System recognizes that floor nominations are required in accord with the Farm Credit Act. However, the current procedures are unwieldly, cumbersome, time-consuming and costly. Moreover, they actually undermine the existing nominating committee process and FCA guidance and can impede the ability of stockholders to make an informed voting decision. They make compliance with disclosure requirements difficult for both the institution and the nominee. We believe associations should have increased flexibility to adopt procedures that maintain the ability for floor nominations, while facilitating compliance with disclosure and voting procedures.

We received several comments on the requirements of 620.6, and in particular to the provisions relating to retirement account information and travel reimbursement policies. The current regulations require disclosures that are not only unduly burdensome, but also confusing or even misleading to stockholders. We believe this is an area where the quality of the disclosures can be improved, while reducing paperwork and costs.

We again urge you to reconsider your prohibition on the purchase of whole loans by System institutions in Section 614.4330. Several years ago the agency took the step to recognize the purchase of 100% participations in loans. Allowing System institutions to actually purchase whole loans would be of real benefit to farmers and ranchers in their financial planning, without increasing the credit exposure to the System over that created by the purchase of participations.

The Agency has not updated the Scope of Lending regulation, 613.3005 since 1997. As you are well aware, "farming" and who is considered a full-time farmer have continued to evolve over this time. Many farmers, regardless of the size of the farming operation, have multiple sources of off-farm income, but still devote a significant amount of time to farming.

This is particularly true with the Young, Beginning and Small (YBS) segment, which the System is directed to serve. Several comments also noted that FCA guidance in regard to financing of legal entities with 100% ownership by eligible farmers needs to updated to reflect the variety of modern legal structures used in agricultural production.

Section 4.29 of the Act requires a written notice to customers that the purchase of insurance (when required as condition to obtain the loan) through the lender is optional. 618.8040(b) should be revised to eliminate the requirement for a separate, written statement.

PCA and ACA loan authorities should be updated to reflect current System structure. There is no statutory basis to maintain restrictions on PCA real estate lending, or that loans amortize within a period of 15 years (614.4040), or whether the customer already owns the land or is purchasing it. Amortization and repayment should be a matter of appropriate credit administration, not regulation.

Sec. 615.5134(d) describes specific, extensive requirements for each System bank to maintain its liquidity reserve. All System banks maintain liquidity reserves well in excess of regulatory requirements. The imposition of an additional "marketability study" for each bank is unduly burdensome and ignores the facts and circumstances of each bank's portfolio. FCA should look at both the quantity and quality of the bank's liquidity reserve, as well as its actual experience with execution of transactions to decide whether a study is necessary, rather than imposing an arbitrary requirement to conduct a study that is both costly and of little, if any, value.

Section 5.19 of the Act requires FCA to conduct an examination of each System institution at least every 18 months. Given the strong financial performance and credit quality of many institutions, the agency should consider lengthening the time between exams for highly rated institutions. This would not only reduce costs at the institution level, but also allow FCA to better leverage its own resources as well as reduce its own costs.

FCA has increased the amount of loan data (Loans2 reporting) required to be submitted to the agency. There is a material administrative cost to System institutions to update and maintain the systems to collect and report that information. FCA should consider the costs and benefits of those requirements on an institution specific basis.

Section 614.4150 does not specifically direct institutions to annually request updated financial information from customers. However, anecdotal evidence suggests that this is a requirement from the Office of Examination. Typically, these requests are ignored by customers (unless there is some other kind of loan servicing requirement), and in some cases the customers object, damaging an otherwise positive relationship without creating any credit administration benefit. This issue dates back to the credit crisis of the 1980s.

FARM CREDIT COUNCIL

Hopefully, we are past the time when this requirement is appropriate on any kind of an "across the board" basis.

Several institutions noted that the requirements for evidencing an independent credit judgement by a purchaser of a loan participation from another System institution are unduly burdensome (614.4325(e)). Of course, each institution needs to be accountable for the loans, including purchases of participations, in their portfolio. Some form of simplified credit summary, or other analysis by a credit officer of the purchasing institution should be adequate to satisfy the requirements for an independent decision.

The Special Collateral Requirements (615.5060) for post-closing certification, after the issuance of a standard title policy and compliance with customary loan closing procedures, are duplicative and unnecessary. With this requirement, the System institution is being asked to effectively "re-certify" the work that the title insurance company has been paid to perform. The title insurance company has agreed to insure the risks that this regulation is designed to mitigate, which makes this requirement burdensome.

Eliminate the requirement for distribution of the annual report in accord with 620.4. Electronic access should be adequate, or simply provide that stockholders can obtain copies at the institution's offices. With current technology, there is simply no need to mail copies of the annual report.

Eliminate the regulatory approval process for formation of UBEs pursuant to 611.1155 and address compliance through the examination process.

We encourage the agency to reconsider the exceptions to "E-Sign" notifications, and particular those in Subpart D of part 617. We note that E-Sign notifications of adverse credit decisions are permitted under ECOA regulations.

Again, we thank the FCA for this opportunity to comment on reducing regulatory burden. We urge the agency to move forward with its consideration of the comments received, and to adopt new rules as soon as you have completed your review. Please do not hesitate to contact me if we can provide additional information.

Respectfully submitted,

Charles Dana
Senior Vice President and General Counsel